



In the August 6, 2003 Award, Judge Clark denied claimant's request for benefits after finding claimant had failed to prove that she had sustained additional injury to her upper extremities while working for respondent.

Claimant contends Judge Clark erred. Claimant argues she sustained additional injury to her upper extremities due to the work that she performed for respondent. Claimant argues she is entitled to receive an award of work disability (a permanent partial general disability greater than the functional impairment rating).

Conversely, respondent argues the Award denying claimant's request for benefits should be affirmed.

The issues before the Board on this appeal are:

1. Did claimant sustain additional injury to her upper extremities as a result of the work that she performed for respondent from February 6 through March 22, 2001?
2. If so, did claimant provide respondent with both timely notice of the accidental injury and timely written claim?
3. If so, what is the nature and extent of claimant's injury and disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

On February 6, 2001, respondent replaced Sodexho Marriott in providing housekeeping services at Wesley Medical Center in Wichita, Kansas. Accordingly, claimant, who had worked for Sodexho Marriott as a housekeeper, began working for respondent.

Before that change in employers, and while working for Sodexho Marriott, claimant developed bilateral carpal tunnel syndrome. In June 2000, claimant underwent right carpal tunnel release surgery and in July 2000 she underwent left carpal tunnel release surgery. In late November 2000, claimant's surgeon, Dr. John D. Osland, released claimant to return to regular work as tolerated. In late December 2000, the doctor released claimant from treatment after she had decided against having additional surgery on her left arm.

Following her surgeries, claimant returned to work for Sodexho Marriott, who accommodated claimant by providing lighter work.

Claimant's job duties changed, however, when respondent took over the housekeeping duties at the medical center. Respondent did not accommodate claimant's injuries but, instead, returned her to her former duties cleaning hospital rooms and offices. That work required frequent lifting, pushing and pulling up to 50 to 60 pounds, which caused sharp pains in claimant's hands, wrists and arms.

Claimant reported her symptoms to her supervisor, Carla Hardwell, and sought medical treatment at the medical center's emergency room. According to claimant, the emergency room ruled out a heart attack, prescribed pain medication and sent her home. Sometime later, claimant also told another supervisor, Larry Fitch, about the pain in her upper extremities.

In the latter part of March 2001, claimant provided respondent with a copy of work restrictions that she had obtained from Dr. Pedro A. Murati, whom she had seen the month before. Upon receiving those restrictions, respondent terminated claimant as it would not provide accommodated work. Accordingly, claimant's tenure of employment with respondent was February 6 through March 22, 2001.

Claimant looked for other employment and in October 2001 began working for a day care center. Claimant left that day care after three or four months and began operating her own day care business.

**1. Did claimant sustain additional injury to her upper extremities due to the work that she performed for respondent from February 6, 2001, through her last day of employment with respondent on March 22, 2001?**

As indicated above, claimant developed bilateral carpal tunnel syndrome while working as a housekeeper for Sodexho Marriott and underwent bilateral carpal tunnel release surgeries. Claimant initiated a workers compensation claim against Sodexho Marriott for those injuries and that claim was eventually settled in early March 2002.

On February 1, 2001, claimant saw Dr. Murati to be evaluated for the claim against Sodexho Marriott. At that time, Dr. Murati concluded claimant had sustained a 23 percent impairment to her left upper extremity and a 10 percent impairment to her right upper extremity for a 19 percent whole body functional impairment under the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.). Additionally, after reviewing the task list prepared by vocational counselor Jim Molski, Dr. Murati concluded claimant had lost the ability to perform 50 percent of the work tasks that she had performed in the 15-year period before developing her upper extremity injuries.

Dr. Murati's 19 percent whole body functional impairment rating was only slightly higher than the rating provided by Dr. Osland, who is a board-certified orthopedic surgeon.

On December 28, 2000, using the *AMA Guides* (4th ed.), Dr. Osland rated claimant's functional impairment at 20 percent to the left upper extremity and 10 percent to the right upper extremity, which created a 17 percent whole body functional impairment when combined.

On June 12, 2002, Dr. Murati saw claimant for a second time to be evaluated for this claim against respondent. Dr. Murati concluded claimant had sustained additional loss of strength in both upper extremities since he had seen her in February 2001. Consequently, the doctor concluded claimant had sustained an additional 17 percent whole body functional impairment as she now had an additional 20 percent impairment to her right upper extremity and an additional 10 percent impairment to her left upper extremity. Moreover, the doctor also concluded claimant's task loss had increased from 50 percent to 67.8 percent. But, as the Judge aptly noted, Dr. Murati's history of injury was suspect as the doctor was unaware claimant's employment with respondent and the potentially injurious work activities ended in March 2001.

In late January 2003, Dr. Osland saw claimant to address the question of whether claimant's injuries had worsened since he had last seen her in December 2000. Dr. Osland concluded claimant's grip and pinch strength test results were similar to those done in November 2000 and, consequently, concluded claimant's functional impairment ratings had not changed from those he had given in December 2000. Moreover, the doctor did not change the task loss opinion that he had given in the claim against Sodexo Marriott. As he had done in November and December 2000, the doctor continued to recommend additional treatment for the scar tissue claimant had developed in her left upper extremity. In short, Dr. Osland concluded claimant's bilateral upper extremity condition was essentially the same as it was when he had seen her in late December 2000.

The Judge determined claimant had failed to prove that she sustained additional injury due to the work that she performed for respondent from February 6 through March 22, 2001. The Board finds no reason to disturb that finding. The Board is persuaded by Dr. Osland's testimony and opinions. Consequently, the August 6, 2003 Award should be affirmed.

The remaining issues listed above are rendered moot and need not be addressed.

**AWARD**

**WHEREFORE**, the Board affirms the August 6, 2003 Award.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2004.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Thomas M. Warner, Jr., Attorney for Claimant  
Wade A. Dorothy, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director